is *State* v. *Power*, 24 Wash. 34, 63 Pac. 1112, 63 L. R. A. 902. In a recent Michigan case hearsay evidence of statements of the deceased made as she left the house to take a walk with the defendant were admitted as being verbal acts. The court said, "We are of opinion that it was competent to prove her utterances made when she was leaving her home, and the neighbor's home, on Tuesday evening, not as evidence of the fact that she met respondent, but as evidence of her intention to meet him, and explanatory of her purpose in going away. Her utterances were in the nature of verbal acts, accompaning the act of going away." *People* v. *Atwood*, 188 Mich. 36, 154 N. W. 112. Another line of cases admit the declarations of the woman, on the theory of declarations made in furtherance of a conspiracy to commit an unlawful act. A woman may conspire with others to produce an abortion upon herself, and the conspiracy being shown, her acts and declarations in furtherance of the common design are evidence against others engaged in the criminal act, even though not spoken in their presence. The Supreme Court of Iowa says, "Though she may not be guilty of committing an abortion on herself, it is a crime for another to do so, and, if she conspires with others to perform the act, there is no escape from the conclusion that she is a conspirator, and her declarations in promotion of the common enterprise are admissible in evidence against another conspirator on trial for the commission of the substantive crime." *State* v. *Croffard*, 133 Ia. 478, 110 N. W. 921. In *Solander* v. *People*, 2 Colo. 48, the same doctrine was announced. The court said, "She may be, and usually is, a party to the illegal combination to effect the abortion, and, as this is the ground upon which the declarations are submitted, it can make no difference that she is not criminally liable for the act." Declarations made after the act is accomplished, except as dying declarations, are not admitted. *People* v. *Hatz* 261 Ill. 239, 103 N. E. 1007; *Rex* v. *Thompson* [1912], 3 K. B. 19, Ann Cas. 1913A 530.

INFANTS—BILLS AND NOTES.—A minor was the payee of a note due upon the date of his becoming of age. His father, with the infant's consent, endorsed the infant's name upon it and delivered it to the defendant, receiving the money for it. The defendant supposed the father was the owner of the note. The money was invested and lost. The infant sued to recover the note. No actual fraud was found on his part. The NEGOTIABLE INSTRUMENT ACT provides that: "The indorsement * * * of the instrument * * * by an infant passes the property therein notwithstanding that from want of capacity * * * the infant may incur no liability thereon." *Held* that the provision of the statute did not affect the infant's right to disaffirm his contract of indorsement and that he should recover the note, *Murray* v. *Thompson* (Tenn. 1916), 188 S. W. 578.

This seems to have been the first time that the question as to the infant's right to disaffirm his contract of indorsement has come up since the passing of the NEGOTIABLE INSTRUMENTS ACT. The court states that this ACT merely settled the question as to whether the infant's indorsement was voidable or void as to which there was considerable dispute. STORY, PROMISSORY NOTES, §78.

The NEGOTIABLE INSTRUMENT ACT makes the indorsement voidable and not void. The court says the ACT was not intended to pass the property from the infant without the right of disaffirmance, and if the words were so construed the endorsee could keep the note as against the infant even if he knew the endorser was an infant when the note was indorsed. There are very few cases upon this point. In *Roach* v. *Woodall,* 91 Tenn. 206, the guardian of an infant recovered a note from an indorsee when the infant's indorsement had been forged, the court saying by way of dictum that the infant's indorsement is void. In *Briggs* v. *McCabe,* 27 Ind. 327, the infant payee recovered the note from the maker who had collusively paid the note to the endorsee, it also appearing that the infant had not received full value for the note. The court said that an infant might disaffirm an indorsement of a note without returning the proceeds or property received by him. However, this case is distinguishable from the principal case, for there appeared to be fraud as against the infant while in the principal case there was no fraud against him. *Hosler* v. *Beard,* 54 Oh. St. 398, holds that a bona fide holder of a note made by a lunatic is charged with constructive notice of the maker's disability, and says the same is true of an infant's note. *McClain* v. *Davis,* 77 Ind. 419, holds the same as regards the note of an epileptic. Where there is an infant indorser it does not preclude the indorser from recovering from the maker, even before the NEGOTIABLE INSTRUMENTS ACT, *Nightingale* v. *Withington,* 15 Mass. 272; *Frazier* v. *Massey,* 14 Ind. 382. Of course the infant may not retain the proceeds until after becoming of age and then disaffirm, *Curry* v. *St. John Plow Co.,* 55 Ill. App. 82. But in the principal case the proceeds had been lost, and the disaffirmance appears to have taken place before majority.

LANDLORD AND TENANT—SURRENDER.—Defendant leased premises from plaintiff, but abandoned them before the expiration of the term. Plaintiff notified defendant that the surrender would not be accepted; that the premises would be sublet, and the rent applied in mitigation of the damages. Plaintiff relet in accordance with the notice, and now brings this action to recover the damages suffered in excess of the amount received from the new lease. *Held,* plaintiff should recover such damages as were not extinguished by the proceeds from the "sublease." *Rucker* v. *Mason* (Okla. 1916), 161 Pac. 195.

There is a surrender of a lease by "act and operation of law" when transactions have taken place between landlord and tenant which create a condition of facts inconsistent with the continued operation of the lease. The granting of a second lease is such a transaction. By its execution the landlord asserts control over the premises. The legal effect of such control is to deny the existence of the estate created by the old lease. The landlord's protests of a contrary intention cannot change the color of his acts. It is the landlord who grants the new lease, not the defaulting tenant. To call it a "sublease" is fictional. There is no legal principle which permits one to constitute himself another's agent in order to reduce certain damages for which that other may be liable. The decisions holding that these facts show